

REMARKS

The examiner has indicated that the subject matter of claims 1-20 is obvious in view of the combined teachings of U.S. Patent 5,367,958 to Weiss taken in view of Chapter 19 of The Making Shaping and Treating of Steel. The office action erroneously indicated that the Weiss patent number was 6,367,958 in the office action, although it was correctly cited in the examiner's 892 form. As the reference is correctly cited for the record, and the applicant's are well aware of this reference and its teachings, no further correction is needed.

The examiner asserts that the Weiss patent discloses "a gondola railcar with a center sill similar to that recited in the instant claims." The examiner then asserts that the Weiss patent "is silent as to whether the center sill is cold formed." These statements are misconstruing the prior art teachings.

The first step in setting forth a rejection under 103 is stating the differences between the prior art and the present claimed invention. The examiner is correct that the Weiss patent discloses "a gondola railcar with a center sill" and the center sill has the shape as shown, however, other than these crude similarities the center sill in the Weiss patent is NOT "similar to that recited in the instant claims". Furthermore, the examiner's statement that the Weiss patent "is silent as to whether the center sill is cold formed" is certainly misleading. The Weiss patent illustrates, to those of ordinary skill in the art, a steel railcar center sill formed by welding a plurality of hot rolled flat pieces or hot rolled sections together as a unit along its length. There is nothing in the Weiss patent to suggest that the center sill disclosed therein could be formed by any other method than conventional techniques for forming railcar center sills.

The Weiss patent and the present application have a common assignee and the applicant's are believed to be particularly well suited to elaborate on the teachings of this reference. The subject 1994 railcars incorporating the two piece center sill shroud for railcars that is the subject of the Weiss patent were not cold formed center sills, and these were in fact steel railcar center sill formed by welding a plurality of hot rolled flat pieces or hot rolled sections together as a unit along its length. It should be noted that in commercializing the present invention, it was more than designing a cold formed center sill as claimed, but the cold forming line had to be created to accomplish the design. Prior to the construction of this unique cold forming line, it is not clear that any cold forming line existed that could have constructed the cold formed railcar center sill of the present invention. For all of these reasons, the Weiss patent is believed to be far from "silent as to whether the center sill is cold formed"; but instead is believed to reinforce the state of the prior art and teach away from the present invention. The applicant's believe that these factual statements regarding the Weiss patent are sufficient for the record, but would be willing to work with the examiner to supplement these statements with declarations from, for example, the available inventors or others working with the subject matter of the Weiss patent, should this deemed appropriate.

The examiner then relies upon the teachings of Chapter 19 of the Making Shaping and Treating of Steel to demonstrate that cold forming is well known for forming certain structural shapes, and then concluding that it would have been obvious to one of ordinary skill in the art to cold form the center sill of the Weiss patent to achieve the advantages of cold forming. The applicant's strongly disagree with this assertion and find it is against the explicit teachings of the references taken as a whole.

The applicant's have already asserted the rational for why the Weiss patent teaches a conventional center sill of welded hot rolled sections to one of ordinary skill in the art. The examiner at least acknowledges that the Weiss patent does not explicitly or implicitly disclose a cold formed center sill of the present claimed invention. The Making Shaping and Treating of Steel reference TEACHES AWAY from the asserted combination. It is well known that a prior art must be considered AS A WHOLE for what it teaches to one of ordinary skill in the art. Chapter 25 of the Making, Shaping and Treating of Steel, already of record, explicitly discusses the formation of railcar forming center sills (see the first paragraph on page 716, figure 25-9 showing the rolling passes for a railroad car center sill section and the associated description on page 720). This section discusses how the railcar center sill sections are hot rolled then "fitted together" (welded).

The examiner does not explain why one of ordinary skill in the art reviewing the Weiss patent that has an "objective of the invention to provide an improved two piece center sill shroud" would elect to make the center sill in another manner than that which is conventional, and this conventional fashion is EXPLICITLY discussed in chapter 25 of the Making Shaping and Treating of Steel discussed above (namely fitted together hot rolled sections).

One of ordinary skill in the art viewing these references as a whole would clearly be led to making the railcar center sill in the manner explicitly disclosed for forming railcar center sill, namely hot rolling sections that are fitted together, as discussed and explained in Chapter 25. Further, Chapter 19 of the Making Shaping and Treating of Steel does not contradict Chapter 25, there is simply nothing in this description to suggest the formation of a one or two piece cold formed center sill for a railcar. It is only the applicant's own disclosure that this suggestion can be found. ALL of the prior art cited by the examiner supports the patentability of the present claimed invention, and reinforces the state of the art described in the background of the invention.

Claim 2 depends from claim 1 and explicitly defines two cold formed sections with only a single weld and claim 18 is similar. Claim 6 depends from claim 1 and defines that the center sill is formed of a single cold formed section and claims 8 and 15 are similar. In apparently addressing the latter claims the examiner has asserted that the Weiss patent "does not show or describe his center sill as having weld seams; therefore, it would not be proper to insist otherwise." It would appear that the examiners rational with regard to claims 6, 8 and 15 are reasons for allowance regarding claims 2 and 18. This is not, however, an entirely accurate summary of the Weiss patent teachings. The Weiss patent does not discuss the method of forming the center sills at all, as it is not the object or focus of this reference. The Weiss patent illustrates a one piece structure since, after assembly it is effectively a one piece structure, essentially forming the backbone of the railcar. As noted above, the center sill of the Weiss patent would be formed by conventional methods, such as described in Chapter 25 of the Making Shaping and Treating of Steel (in which two ½ z sections are fitted (i.e. welded) together). The Weiss patent is not believed to teach or suggest a cold formed center sill as discussed above, but is believed to further teach away from a cold formed center sill formed from a one piece cold formed section as defined in claims 6, 8 and 15. In conclusion the applicant's believe that claims 2 and 18 define over the prior art largely for the reasons discussed above and that claims 6, 8 and 15 further define over the prior art of record. If, however,

the examiner maintains the current reliance upon the Weiss reference, then claims 2 and 18 would further distinguish the invention from the examiner's interpretation of the Weiss patent.

Claims 1-20 remain in the application and favorable action on all the claims is respectfully requested.

Respectfully Submitted;

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